

**Amendments to the Drawings:**

Applicant has amended Figs. 5 and 11 to show a cross-section pattern representative of plastic material. The replacement sheets containing revised Figs. 5 and 11 are attached at the end of this paper.

### **REMARKS**

At the onset, Applicants wish to thank the Examiner for the courtesy extended to the Applicants' attorney representative in an interview conducted by telephone on September 6, 2005. Proposed claim amendments were discussed, but agreement on the claims was not reached.

Claims 1-3, 5, 6, 11, 12, and 14, as amended, are pending in the application. Claims 4, 7-10, 13, and 15-22 have been previously withdrawn due to a restriction requirement. Claim 1 has been amended to more particularly point out and claim the invention. In particular, claim 1 has been amended to recite that the living hinge connects to the skirt along an interior edge of the skirt. Support for this amendment is found at least in the original drawings, especially Figs. 4 and 5. Claim 11 has been amended to address a rejection under 35 U.S.C. § 112. In particular, claim 11 has been amended to clarify that the area of an opening extending through a closure is at least equal to the area of an opening of a container with which the closure is combined. Support for the amendment is found in original claim 11. No new matter has been added by the foregoing amendments.

### **Objection to the Drawings**

The Examiner objected to the drawings under 37 C.F.R. § 1.83(a) for failure to show the cross-section pattern symbolic of the plastic material disclosed in the specification. In accordance with the Examiner's comments, Figs. 5 and 11 have been amended to show a cross-section pattern symbolic of plastic material. In view of the amendment of Figs. 5 and 11, Applicants respectfully submit that the drawings are in full compliance with the requirements set forth in 37 C.F.R. § 1.83(a) and 37 C.F.R. § 1.121(d), and respectfully requests that the objection to the drawings under 37 C.F.R. § 1.83(a) be withdrawn.

### **Claim Rejection – 35 U.S.C. § 112**

Claims 11, 12, and 14 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Examiner states that in claim 11 it is unclear whether the closure opening area is equal to or larger than the container opening area. In view of the

Examiner's comments, Applicants have amended claim 11 to clarify that the second area defined by the closure opening is equal to or greater than the first area defined by the container opening.

Applicants respectfully submit that claims 11, 12, and 14, as amended, are in full compliance with the requirements of 35 U.S.C. § 112, second paragraph, and requests that rejection of claims 11, 12, and 14 under 35 U.S.C. § 112, second paragraph be withdrawn.

**Claim Rejection – 35 U.S.C. § 102 – Claims 1, 2, 5, 6, 11, and 14**

The Examiner has rejected claims 1, 2, 5, 6, 11, and 14 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,582,314 (Quinn *et al.*, hereinafter "Quinn"). The Examiner asserts that Quinn discloses each and every feature recited in rejected claims. The rejections of claims 1, 2, 5, 6, 11, and 14, as amended, are respectfully traversed.

Referring to Figs. 3-5, Quinn discloses a container cap assembly 12 comprising a cap body 14 including an annular wall 16 to which a lid member 18 is attached by hinge means 20. Hinge means 20 is disclosed to comprise a hinge plate 66 formed as part of cover 18, and an elongated recess 68 formed as part of cap body 14. Engagement of a hinge pin 74 (formed as part of hinge plate 66) with bore 72 (formed within cap body 14) rotatably secures the lid member 18 to the cap body 14. The lid member 18 and cap body 14 are separate, discrete pieces. The hinge formed by hinge pin 74 and bore 72 is disclosed to be positioned well below an upper surface defined by an upright lip 28 of wall 16. Quinn further discloses an opening extending through the cap body 14 having an area defined by an inner circumference of lip 38.

Claim 1, as amended, recites, *inter alia*,

...  
a living hinge connecting the upper surface of the skirt along an interior edge of the skirt and the top surface of the lid and supporting the lid for movement between a closed position, wherein the upper surface of the skirt and the top surface of the lid are generally coplanar, with the bottom surface of the lid being in engagement with the ledge, and an open position, wherein the lid is pivoted away from the upper surface of the skirt to access the opening, wherein the hinge has a length between the upper surface of the skirt and the top surface of the lid which is substantially

coplanar with the upper surface of the skirt and the top surface of the lid when the lid is in the closed position; ... .

Quinn fails to disclose the feature of a living hinge connecting the upper surface of the skirt along an interior edge of a skirt and the top surface of the lid, wherein the upper surface of the skirt and the top surface of the lid are generally coplanar, as recited in claim 1. The hinge means 20 of Quinn extends into the elongated recess 68 formed in the cap body 14, away from the upper surface of the skirt defined by upright lip 28. The hinge of Quinn does not connect an upper surface of a skirt and a top surface of a lid which is coplanar with the upper surface of the skirt.

Furthermore, Quinn fails to disclose at least the additional feature recited in claim 1 of a hinge having a length between the upper surface of the skirt and the top surface of the lid which is substantially coplanar with the upper surface of the skirt and the top surface of the lid when the lid is in the closed position. With the lid member 18 in the closed position, a length of the hinge means 20 of Quinn extends from a first end substantially coplanar with an upper surface of the skirt to a point within elongated recess 68, which is substantially below the plane of the upper surface of the skirt. The length of the hinge (in the closed position) is thus not substantially coplanar with upper surface of the skirt and the top surface of the lid.

As Quinn fails to disclose each and every element of claim 1, as amended, Applicants respectfully submit that claim 1, and claims 2, 3, 5 and 6 depending therefrom, are not anticipated by Quinn, and request that rejection of these claims under 35 U.S.C. § 102(b) be withdrawn.

Claim 11, as amended, recites, *inter alia*,

...  
a container including an annular neck defining a container opening, the container opening defining a first area;  
a closure including:  
a generally annular skirt including an outer surface and an inner surface and the skirt further including a closure opening extending therethrough, the closure opening defining a second area, the first and second areas being similar in shape;  
...

wherein the second area of the closure opening is at least equal to the first area of the container opening.

Quinn fails to disclose at least the feature of a closure opening having an area which is at least equal to an area of a container opening, as recited in claim 1, as amended. Quinn discloses a closure opening defined by an inner circumference of lip 38. Quinn does not disclose the size of an opening in container 10 relative to the closure opening, and therefore Quinn cannot disclose the container opening being equal to or smaller than the closure opening.

As Quinn fails to disclose each and every element of claim 11, as amended, Applicants respectfully submit that claim 11, and claims 12 and 14 depending therefrom, are not anticipated by Quinn, and request that rejection of these claims under 35 U.S.C. § 102(b) be withdrawn.

**Claim Rejection – 35 U.S.C. § 103 – Claims 3 and 12**

The Examiner has rejected claims 3 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Quinn in view of U.S. Patent No. 5,368,176 (Thanisch) or U.S. Patent No. 5,147,054 (Pehr). The Examiner admits that Quinn fails to disclose a hinge formed integrally with the lid and skirt. The Examiner relies upon Thanisch or Pehr to teach a hinge being formed integrally with a lid and skirt. Applicants respectfully traverse rejection of claims 3 and 12.

Claim 3 is allowable at least by virtue of its dependency upon claim 1. Assuming *arguendo* that Quinn is properly combinable with either Thanisch or Pehr, the proposed combinations would fail to disclose at least the features recited in claim 1, as amended, of: 1) a living hinge connecting the upper surface of the skirt along an interior edge of a skirt and the top surface of the lid, wherein the upper surface of the skirt and the top surface of the lid are generally coplanar; and 2) a hinge having a length between the upper surface of the skirt and the top surface of the lid which is substantially coplanar with the upper surface of the skirt and the top surface of the lid when the lid is in the closed position.

Claim 12 is allowable at least by virtue of its dependency upon claim 11. Again assuming *arguendo* that Quinn is properly combinable with either Thanisch or Pehr, the proposed combinations would fail to disclose at least the feature recited in claim 11, as amended, of a closure opening having an area which is at least equal to an area of a container opening.

As the cap assembly of Quinn modified as proposed by the Examiner by either Thanisch or Pehr fails to disclose, teach, or suggest each and every element of claims 1 or 11, it is respectfully submitted that a *prima facie* case for obviousness has not been established with respect to claim 1, and claim 3 depending therefrom, or with respect to claim 11, and claim 12 depending therefrom. Accordingly, it is requested that the rejection of claims 3 and 12 under 35 U.S.C. § 103(a) be withdrawn.

**CONCLUSION**

In view of the foregoing amendment and remarks, Applicants respectfully submit that the present application, including claims 1-3, 5, 6, 11, 12, and 14 is in condition for allowance, and such action is respectfully requested.

Respectfully submitted,

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October 27, 2005 By: Martin G. Belisario  
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